such other officer of the Commission as the Board, by resolution, may direct, and be attested by the Secretary, or by such other officer of the Commission as the Board, by resolution, may direct, and shall be sealed with the Commission's corporate seal. The interest coupons attached to such bonds shall be executed by the facsimile signatures of the persons who shall execute the bonds. The Chairman and the Secretary or other officers of the Commission executing the bonds shall adopt for their own signatures, their respective facsimile signatures appearing on such coupons. In case any officer whose signature shall nevertheless be valid and sufficient for all purposes, the same as if said officer had remained in office until such delivery.

In its discretion, the Public Building Commission may from time to time, as often as it may deem to be advantageous, issue refunding bonds to refund its bonds prior to their maturity, refund its outstanding matured bonds, refund matured coupons evidencing interest upon its outstanding bonds; refund interest at the coupon rate, upon its outstanding matured bonds that has accrued since the maturity thereof, and refunds its bonds which by their terms are subject to call or redemption before maturity. All bonds redeemed or purchased in accordance with this Act shall forthwith be cancelled and shall not be used again.

To secure the payment of any or all revenue bonds and for the purpose of setting forth the covenants and undertakings of the Commission in connection with the issuance of revenue bonds and the issuance of any additional revenue bonds payable from such revenue income to be derived from the operation, management or use of the buildings or other facilities acquired or to be acquired by the Commission, the Commission may execute and deliver a trust agreement or agreements except that no lien upon any physical property of the Commission shall be created thereby.

The proceeds from the sale of bonds hereunder shall be paid to the Treasurer of the Public Building Commission, or in the event that a trust agreement is executed and delivered by the Commission, then and in such event, the proceeds from the sale of bonds hereunder shall be paid to the trustee or trustees specified in any such trust agreement. If the proceeds from the sale of the bonds issued hereunder shall exceed the cost of the project, the Public Commission shall place such excess funds in the sinking fund created for making payment of principal or interest of such bonds as the same matures or for the purchase of outstanding bonds at such times and in such manner as may be provided in the resolution authorizing the issuance of such bonds, or in any trust agreement or contract entered into with the bondholders.

The resolution shall provide for the creation of a sinking fund account into which shall be payable from the revenues of such project from month to month as such revenues ar collected, such sums in excess of the cost of maintenance and operation of the project and the costs of administration of the Commission, as will be sufficient to comply with the covenants of the bond resolution and sufficient to pay the accruing interest and retire the bonds at maturity. The Board of Commissioners, in such resolution, may provide for such other accounts as it may deem necessary for the sale of the bonds. The monies in said accounts shall be applied in the manner provided by the resolution, the trust agreement or other contract with the bondholders.

No bond issue under this Act shall constitute a debt of the Commission or of any public body within the meaning of any statutory or constitutional limitation as to debt.

From and after issuance of bonds as herein provided it shall be the duty of the Board of Commissioners to es-

tablish and fix rates, rentals, fees and charges for the use of any and all buildings or space therein or other facilities owned and operated by the Commission, sufficient at all times to pay maintenance and operation costs and to pay the accruing interest and retire the bonds at maturity and to make all payments to all accounts created by any bond resolution and to comply with all covenants of any bond resolution. 1955, July 5, Laws 1955, p. 905, ¶15.

3316. Trust agreements with or for bondholders—Enforcement

Any trust agreement or agreements entered into with or for the benefit of the bondholders may prescribe by whom or on whose behalf action may be taken by the bondholders, and in the absence of any such provision in the trust agreement or agreements, any holder of a bond or bonds, or of any of the coupons of any bond or bonds, issued under the provisions of this Act, subject only to a contractual restriction binding upon any such bondholder or holders, may:

(a) By mandamus, suit, action or proceeding at law or in equity, compel the Commission, and the member or members, officers, agents or employees thereof, to perform each and every term, provision and covenant contained in any resolution, trust agreement or contract with or for the benefit of such bondholder, and to require the carrying out of any or all such covenants and agreements of the Commission and the fulfillment of all duties imposed upon said Commission by this Act.

(b) By suit, action or proceeding in equity, sue to enjoin any act or things which may be unlawful, or in violation of any of the rights of said bondholder. 1955, July 5, Laws 1955, p. 905, ¶16.

3317. Revenue bonds—Legal investments

The State and all counties, cities, villages, incorporated towns and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, monies or other funds belonging to them or within their control in any revenue bonds issued pursuant to this Act, it being the purpose of this section to authorize the investment in such revenue bonds of all sinking, insurance, retirement, compensation, pension and trust funds, whether owned or controlled by private or public persons or officers. 1955, July 5, Laws 1955, p. 905, ¶17.

3318. Levy and collection of annual tax to pay lease rentals—Filing certified copy of lease or tax ordinance

Whenever, and as often as a municipal corporation having taxing powers enters into a lease with a Public Building Commission, the governing body of such municipal corporation shall provide by ordinance or resolution, as the case may be, for the levy and collection of a direct annual tax sufficient to pay the annual rent payable under such lease as and when it becomes due and payable. A certified copy of the tax levying ordinance or resolution, as the case may be, of such municipal corporation shall be filed in the office of the county clerk in each county in which any portion of the territory of such municipal corporation is situated, which certified copies shall constitute the authority for the county clerk or clerks, in each case, to extend the taxes annually necessary to pay the annual rent payable

under such lease as and when it becomes due and payable. Upon such filing in the office of the county clerk or clerks of the proper county, it shall be the duty of such county clerk or clerks to ascertain the rate per cent which, upon the full, fair cash value of all property subject to taxation within the municipal corporation, as that property is assessed or equalized by the Department of Revenue, will produce a net amount of not less than the amount of the annual rent reserved in such lease. The county clerk or clerks shall thereupon, and thereafter annually during the term of the lease, extend taxes against all of the taxable property contained in that municipal corporation sufficient to pay the annual rental reserved in such lease. Such tax shall be levied and collected in like manner with the other taxes of such municipal corporation and shall be in addition to all other taxes now or hereafter authorized to be levied by that municipal corporation. This tax shall not be included within any statuary limitation of rate or amount for that municipal corporation but shall be excluded therefrom and be in addition thereto and in excess thereof. The fund realized from such tax levy shall be set aside for the payment of the annual rent and shall not be disbursed for any other purpose until the annual rental has been paid in full. The foregoing shall not be construed to limit the power of the Commission to enter into leases with any municipal corporation whether or not the municipal corporation has the power of taxation. 1955, July 5, Laws 1955, p. 905, ¶18.

3319. Contracts for construction, repair, etc.—Contents—Bond—Insurance

Any contract let for the construction, repair, alteration, or improvement of any building or buildings, the demolition thereof, or removal of debris resulting therefrom, or any other contract let for any other type of construction or re-

pair work, shall contain provisions requiring the contractor or other person, firm or corporation undertaking such work to give bond in such amount and with such surety, conditioned for the faithful performance of the contract as the Board of Commissioners may determine. The Board of Commissioners shall also require such contractor or other persons, firm or corporation to furnish insurance of a character and amount to be determined by the Board of Commissioners, protecting the Commission, its Commissioners, officers, agents, and employees, against any claims for personal injuries (including death) and property damage that may be asserted becauseof the doing of the work. 1955, July 5, Laws 1955, p. 905, ¶19.

3320. Contracts let to lowest responsible bidder—Competitive bidding—Advertisement for bids

All contracts to be let for the construction, alteration, improvement, repair, enlargement, demolition or removal of any buildings or other facilities, or for materials or supplies to be furnished, where the amount thereof is in excess of $2,500.00, shall be let to the lowest responsible bidder, or bidders, an open competitive bidding after public advertisement published at least once in each week for three consecutive weeks prior to the opening of bids, in a daily newspaper of general circulation in the county where the commission is located. Nothing contained in this Section shall be construed to prohibit the Board of Commissioners from placing additional advertisements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract in sufficient detail to enable the bidders thereon to know what their obligation will be, either in the advertisement itself, or by reference to detailed plans and specifications on file in the office of the Public Building Commission at the time of the publication of the first announcement. Such advertisement shall also

state the date, time, and place assigned for the opening of bids and no bids shall be received at any time subsequent to the time indicated in said advertisement. The Board of Commissioners may reject any and all bids received and readvertise for bids. All bids shall be open to public inspection in the office of the Public Building Commission for a period of at least forty-eight (48) hours before award is made. The successful bidder for such work shall enter into contracts furnished and prescribed by the Board of Commissioners and in addition to any other bond required under this Act, the successful bidder shall execute and give bond, payable to and to be approved by the Commission, with a corporate surety authorized to do business under the laws of the State of Illinois, in an amount to be determined by the Board of Commissioners, conditioned upon the payment of all labor furnished and materials supplied in the prosecution of the contracted work. If the bidder whose bid has been accepted shall neglect or refuse to accept the contract within five (5) days after written notice that the same has been awarded to him, or if he accepts but does not execute the contract and give the proper security, the Commission may accept the next lowest bidder, or readvertise and relet in manner above provided. In case any work shall be abandoned by an contractor the Commission may, if the best interests of the Commission be thereby served, adopt on behalf of the Commission all sub-contracts made by such contractor for such work and all such sub-contractors shall be bound by such adoption if made; and the Commission shall, in the manner provided herein, readvertise and relet the work specified in the original contract exclusive of so much thereof as shall be accepted. Every contract when made and entered into, as herein provided for, shall be executed in duplicate, one copy of which shall be held by the Commission, and spread on its records, and one copy of which shall be given to the contractor. 1955, July 5, Laws 1955, p. 905, ¶ 20.

3321. Execution of leases, contracts, deeds, etc.

All leases, contracts, deeds of conveyance, or instruments in writing executed by the Commission, shall be executed in the name of the Commission by the Chairman and Secretary of the Commission, or by such other officers as the Board of Commissioners, by resolution, may direct, and the seal of the Authority shall be affixed thereto. 1955, July 5, Laws 1955, p. 905, ¶ 21.

3322. Exemption from taxation

All property of the Public Building Commission shall be exempt from taxation by the State or any taxing unit therein. 1955, July 5, Laws 1955, p. 905, ¶ 22.

3323. Dissolution of Commission

Any Public Building Commission which has not issued any bonds and has no indebtedness may be dissolved upon the filing, by the presiding officer of the county seat or county board which organized such Commission, in the office of the Recorder of Deeds a copy of a resolution adopted by the governing body of such county seat or county board approving such dissolution. 1955, Laws 1955, p. 905, ¶ 22.1, added 1957, May 16, Laws 1957, p. 178, ¶ 1.

3324. Partial invalidity

The provisions of this Act and the applications thereof to any person or circumstance are declared to be severable.

If any section, clause, sentence, paragraph, part or provision of this Act shall be held to be invalid by any Court, it shall be conclusively presumed that the remaining portions of this Act would have been passed by the Legislature without such invalid section, clause, sentence, paragraph, part or provision.

If the application of any section, clause, sentence, paragraph, part or provision of this Act to any person or circumstance is held invalid, such invalidity shall not affect the application thereof to other persons or circumstances. 1955, July 5, Laws 1955, p. 905, ¶ 23.

3325. Liberal construction of Act

This Act being necessary for or desirable for and intended to secure the public convenience and welfare, the provisions of this Act shall be liberally construed to give effect to the provisions hereof. 1955, July 5, Laws 1955, p. 905, ¶ 24.

FORMER ILLINOIS CONSTITUTION

Article Six, Section Eighteen. County Courts

There shall be elected in and for each county, one county judge and one clerk of the county court, whose terms of office shall be four years. But the general assembly may create districts of two or more contiguous counties, in each of which shall be elected one judge, who shall take the place of, and exercise the powers and jurisdiction of county judges in such districts. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians and conservators, and settlements of their accounts, in all matters relating to apprentices, and in proceedings for the collection of taxes and assessments, and such other jurisdiction as may be provided for by general law. (Constitution of 1870.)

PRESENT ILLINOIS CONSTITUTION

Article Six, Section Nine. Jurisdiction

The Circuit Court shall have unlimited original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law. Adopted general election Nov. 6, 1962.

REVENUE ACT

(Illinois Revised Statutes 1963, Chapter 120, Paragraphs 675 and 716)

675. Payment of taxes—Payments under protest

Current taxes on real property shall be payable in 2 equal installments. The collector, when so requested by the party paying the taxes, shall receive and receipt for such taxes in installments. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter such specification in his return, so that the part on which the tax remains unpaid may be clearly known. The tax may be paid on an undivided share of real estate. In such case the collector shall designate on his record upon whose undivided share the tax has been paid.

If any person desires to object pursuant to the provisions of Section 235 of this Act, to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of said tax installments due, and such payment shall be accompanied by a writing, substantially in the following form:

Payment under protest.

Vol. No. ..... Item No. ..... (as the same appear on the General Tax Bill). Original amount of tax $..... Amount of payment $..... This payment shall be applied to the taxes of all taxing bodies ratably, subject to refund of .....% of the tax, which is objected to on the ground (here set forth ground of objection) and is, accordingly, made under protest.

Name of taxpayer .....

Address .....

The person protesting shall present to the collector 2 copies of the written protest signed by himself. The collector shall write or stamp the date of receiving the same upon the copies, and sign the same, one of which copies he shall retain and the other he shall deliver to the person making the payment under protest.

The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made, and upon his failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes.

When any such objection is filed in a county of fewer than 500,000 inhabitants, there shall also be filed a duplicate copy for the use of the State's Attorney of such county. Any such objection or amendment thereto filed in a county of fewer than 500,000 inhabitants shall contain on the first page thereof a listing of the tax levying units against which the objection is directed. Within 10 days thereafter the clerk of the county court shall deliver such copy to the State's Attorney, taking his receipt therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or ap-

pointed custodian of funds for each tax levying unit, whose tax monies may be affected by such objection, that such objection has been filed. Any amendment filed to such objection, except any amendment permitted to be made in open court during the course of a hearing on such objection, shall likewise be filed in duplicate, with the duplicate copy delivered to the State's Attorney by the clerk as hereinabove provided in the case of original objections, and the State's Attorney shall within 10 days of receiving his copy of such amendment notify the duly elected or appointed custodian of funds for each tax levying unit whose tax monies may be affected by such amendment that such amendment has been filed. The State's Attorney shall also notify such custodian in writing of the date, time and place of any hearing before the court to be held upon such objection or amended objection not later than 4 days prior to the hearing thereon. The notices provided herein shall be by letter addressed to such custodian and may be mailed by regular mail, postage prepaid, postmarked within the 30 day period or the 10 day period, as the case may be, but not less than 4 days before a hearing.

In all counties, when the taxpayer appears and files objection, the court shall, after first determining that due notice, if required, has been given to the tax levying unit, hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest. Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. Refunds shall be made by the collector in accordance with the final orders of the court, and the amount of such refunds shall be deducted from the taxes of the taxing bodies whose taxes were adjudged illegal, in the same or a subsequent year.

Where any tax is paid in full and protested as herein provided before the delinquent taxes are transcribed into the tax judgment, sale, redemption and forfeiture record, and the taxpayer appears and files objection, the collector, within such time as may be fixed by the court, shall file a transcript from the tax warrant book showing the tax, and such transcript shall be an amendment to the tax judgment, sale, redemption and forfeiture record, and the case shall proceed as if the tax had been originally transcribed therein.

In the payment of real or personal property taxes or any installment of real property taxes, the collector shall first apply such payments to interest (including interest added upon forfeiture to real property taxes) and costs, and after the payment of interest and costs such payments shall be applied upon the total tax of real or personal property upon which the payments are made.

No protest shall prevent or be a cause of delay in the distribution of tax collections among the taxing bodies of any taxes collected which were not paid under protest. It shall be the duty of the collector to deduct from the taxes of any taxing body for any year the amount of any tax for any year held illegal by the final order of a court, and use the amount deducted to equalize the distribution. As amended 1957, May 23, Laws 1957, p. 249, ¶ 1; 1961, Aug. 1, Laws 1961, p. 2554, ¶ 1; 1961, Aug. 1, Laws 1961, p. 2567, ¶ 1; 1963, Aug. 23, Laws 1963, p. 3368, ¶ 1.

716. Proceedings by court—Form of order—Cure of error or informality.

The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court

shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: Provided, that no person shall be permitted to offer any such defense unless such writing specifying the particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt, showing that all taxes to which objection is made have been paid under protest pursuant to the provisions of section 194 of this Act; and it shall be the duty of all tax collectors to furnish such duplicate receipt without charge.

If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

> Whereas, due notice has been given of the intended application for a judgment against said lands and lots, and no sufficient defense having been made, or cause shown why judgment shall not be entered against said lands and lots, for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract, or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the People of the State of Illinois, for the sum annexed to each, being the amount

of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

Said order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission, defective act of any other officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default the same was occasioned. Provided, that where separate advertisement and application for judgment and order of sale is made on account of delinquent special taxes or special assessments in all

cities, villages and incorporated towns in counties containing a population exceeding 500,000 inhabitants by the last preceding census of the United States or of this State, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time in which the return, required in section 209, may be made, the procedure shall in all respects be the same as in this section prescribed, except that there shall be two separate judgments and orders for sale, one on account of delinquent special taxes and special assessments and the other on account of delinquent general taxes. As amended 1957, May 23, Laws 1957, p. 249, ¶ 1.

CONVEYANCES

(Illinois Revised Statutes, 1963,
Chapter 30, Paragraph 157)

157. Method of making transfer

If the territory of any municipality shall be wholly within, co-extensive with, or partly within and partly without the corporate limits of any other municipality, and the first mentioned municipality (herein called "transferee municipality"), shall by ordinance declare that it is necessary or convenient for it to use, occupy or improve any real estate held by the last mentioned municipality (herein called the "transferor municipality") in the making of any public improvement or for any public purpose, the corporte authorities of the transferor municipality shall have the power to transfer all of the right, title and interest held by it immediately prior to such transfer, in and to such real estate, whether located within or without either or both of said municipalities, to the transferee municipality upon such terms as may be agreed upon by the corporate authorities of both municipalities, in the manner and upon the conditions following:

(a) If such real estate shall be held by the transferor municipality without restriction, the said municipality shall have power to grant or convey such real estate or any portion thereof to the transferee municipality upon such terms as may be agreed upon by the corporate authorities of both municipalities, by an instrument of conveyance signed by the mayor, president or other chief executive of the transferor municipality, attested by its clerk or secretary and sealed with its corporate seal, all duly authorized by a resolution passed by the vote of two-thirds (⅔) of all of the members of the legislative body of the transferor municipality, and duly recorded in the office of the recorder of deeds in the county in which said real estate is located. Provided, however, that any municipality may, in the manner above provided, convey real estate to a Public Building Commission organized and existing pursuant to "An Act to authorize the creation of Public Building Commissions and to define their rights, powers and duties", approved July 5, 1955, as heretofore or hereafter amended, when duly authorized by a majority vote of all of the members of the legislative body of such municipality whenever provision is made in the conveyance for a reverter of the real estate to such transferor municipality. The transferee municipality shall thereafter have the right to use, occupy or improve the real estate so transferred for any municipal or public purpose and shall hold said real estate by the same right, title and interest by which the transferor municipality held said real estate immediately prior to said transfer.

(b) If any such real estate shall be held by the transferor municipality subject to or limited by any restriction, and the transferee municipality shall desire the use, occupation or improvement thereof free from said re-

striction, the transferor municipality (or the transferee municipality, in the name of and for and on behalf of the transferor municipality, but without subjecting the transferor municipality to any expense without the consent of its corporate authorities), shall have the power to secure from its grantor, or grantors, their heirs, successors, assigns, or others, a release of any or all of such restrictions upon such terms as may be agreed upon between either of said municipalities and the person or persons entitled to the benefit of said restrictions. Upon the recording of any such release the transferor municipality shall then have the powers granted in paragraph (a) of this section.

(c) If either the transferor municipality or the transferee municipality shall be unable to secure a release of any restriction as above provided, the transferor municipality (or the transferee municipality in the name of and for and in behalf of the transferor municipality, but without subjecting the transferor municipality to any expense without the consent of its corporate authorities), shall have the power to file in any Circuit Court, or in the Superior Court of Cook County, a petition for the purpose of removing or releasing said restriction and determining the compensation, if any, to be paid in consequence thereof to the owner or owners of said real estate, for any right, title, or interest which they or any of them may or might have in and to any such real estate arising out of said restriction. If any compensation shall be awarded, the same shall be measured by the actual damage, if any, to the owner or owners of said real estate, resulting from the removal or release of said restriction, and shall be determined as of the date of the filing of said petition. Upon the payment of such compensation as may be awarded, if any, the transferor municipality shall have the powers

granted in paragraph (a) of this section, and said transferor municipality shall grant and convey the said real estate to the transferee municipality upon the terms and conditions theretofore agreed upon by the said municipalities and in the manner provided for in paragraph (a) of this section.

(d) If the transferor municipality shall hold an easement in any real estate for a particular purpose different from the purpose for which the transferee municipality shall desire to use, occupy or improve said real estate, the transferor municipality (or the transferee municipality in the name of and for and in behalf of the transferor municipality, but without subjecting the transferor municipality to any expense without the consent of its corporate authorities), shall have the power to file in any Circuit Court or in the Superior Court of Cook County, a petition for the purpose of terminating said easement and securing the right to use, occupy and improve any such real estate for the purpose or purposes set forth in said petition, and for determining the compensation, if any, to be paid in consequence thereof to the owner, or owners of said real estate. If any compensation shall be awarded, the same shall be measured by the actual damage, if any, to the owner or owners of said real estate, resulting from the termination of said easement and the granting of the right sought in said petition, and shall be determined as of the date of the filing of said petition. Upon the payment of such compensation as may be awarded, if any, the easement held by the transferor municipality shall in the final order entered in such proceeding be declared terminated and the right of the transferee municipality in said real estate shall be declared. If the transferee municipality shall desire to use, occupy or improve said real estate for the

same purpose authorized by the easement held by the transferor municipality, the transferor municipality shall have the power to transfer said easement to the transferee municipality by instrument of conveyance as provided for in paragraph (a).

(e) If such real estate shall have been acquired or improved by the transferor municipality under the Local Improvements Act, or under the said Act in conjunction with any other Act, and the times fixed for the payment of all installments of the special assessments therefor have not elapsed at the time the transferor and transferee municipalities shall have reached an agreement for the transfer of said real estate, the transferee municipality shall deposit with the transferor municipality to be placed in the special assessment funds authorized to be collected to pay the cost of acquiring or improving said real estate, and amount sufficient to pay (1) the installments of said special assessments not due and payable at the time of the agreement for said transfer, and (2) the amounts paid in advance by any property owner on account of said special assessments, which, had such amounts not been paid in advance, would have been due and payable after the date of such agreement, and the transferor municipality shall upon the receipt of such amount cause orders to be entered in the courts in which said special assessments were confirmed, cancelling the installments becoming due and payable after the said time at which the transferor and transferee municipalities shall have reached an agreement for the transfer of said real estate, and releasing the respective lots, tracts, and parcels of real estate assessed in any such proceedings from the installments of said assessments in this paragraph authorized to be cancelled. The transferor municipality shall

after the entry of such orders of cancellation refund to any property owner who has paid the same in advance, any amounts which otherwise would have been due and payable after the said time at which the transferor and transferee municipalities shall have reached an agreement for the transfer of said real estate. Upon the entry of such orders of cancellation the transferor municipality shall then have the powers granted in paragraph (a) of this section.

(f) The procedure, for the removal of any restriction upon the real estate of the transferor municipality, for the termination of any easement of the transferor municipality in said real estate and the declaration of another or different right in the transferee municipality in said real estate, and for the ascertainment of just compensation therefor, shall be as near as may be like that provided in the Eminent Domain Act.

(g) If any property shall be damaged by the release or removal of any restrictions upon, or the termination of any easement in, or the granting of a new right in any real estate held by the transferor municipality, the same shall be ascertained and paid as provided by law. As amended 1961, Aug 4, Laws 1961, p. 2765, ¶ 1.

APPENDIX B.

IN THE SUPREME COURT OF ILLINOIS

Docket No. 38073 — Agenda 74 — September, 1963.

Robert Bowman, Appellant, v. The County of Lake *et al.*, Appellees.

Mr. JUSTICE DAILY delivered the opinion of the court:

This appeal, involving the revenue, is prosecuted by the plaintiff, Ralph Bowman, from orders of the circuit court of Lake County dismissing his complaint and amended complaint brought against the county of Lake, its clerk, its board of supervisors and the Lake County Public Building Commission, and from an order denying his motion to file a further amended complaint.

Pertinent factual background, gathered from the pleadings, briefs and exhibits, shows that by an election held on November 6, 1956, a majority of the voters of the county voted to eliminate the office of township collector. It was anticipated that the elimination would increase the earnings of the office of the county collector by approximately $500,000 per annum and in anticipation of a favorable referendum, (and apparently as the result of public inquiry,) the county board of supervisors, on October 16, 1956, passed a resolution stating in substance that the money would be devoted to such needed "capital expenditures" and "expanded county services" as might be approved by the board, and that when the additional funds became available "no levy shall be approved by this Board, which when added to the balance on hand at the end of the fiscal year, plus anticipated earnings from

other sources during that year, shall produce an amount in excess of the budgeted needs of Lake County."

The next event of consequence occurred on February 9, 1960, when, under authority of the Public Building Commission Act, (Ill. Rev. Stat. 1959, chap. 34, pars. 3301-3325,) the Lake County Public Building Commission was formed by the board of supervisors for the purpose of constructing a new county courthouse. Shortly thereafter, as authorized by section 13 of the act, (Ill. Rev. Stat. 1959, chap. 34, par. 3313,) the county entered into a contract with the commission to transfer the present courthouse land to the commission for use as a building site. On December 14, 1960, as the result of a representative suit brought by the State's Attorney in the name of and on behalf of the People, a decree was entered in the circuit court of Lake County which found that the commission was legally and properly constituted, that the county had the authority to transfer its land to the commission, that the contract between the county and commission was legal and binding, and that the act relating to transfers of real estate by municipal corporations (Ill. Rev. Stat. 1959, chap. 30, pars. 156-158a,) did not apply to the transfer. No appeal was taken from this decree.

On February 6, 1961, the board of supervisors conveyed the land to the commission. Thereafter, in their 1960-1961 appropriation ordinance, again proceeding under authority of section 13 of the Public Building Commission Act, the board made a cash grant of $200,000 to the commission, and in the 1961-1962 appropriation ordinance another cash grant of $450,000 was approved. These sums were in fact transferred to the commission in each of the fiscal years. The 1962-1963 appropriation ordinance approved a further cash grant of $500,000 and, as the matter comes

to us, there are conflicting manifestations as to whether this sum has been transferred. In any event, it was on January 7, 1963, that plaintiff filed the taxpayer's suit which has provoked this appeal.

Plaintiff's original complaint was one for declaratory judgment but it was dismissed January 24, 1963, on motion of defendants and he was granted leave to file an amended complaint. Shortly thereafter, plaintiff filed an amended complaint in equity which, on May 8, 1963, was also dismissed on motion of the defendants. And while plaintiff now seeks review of both orders of dismissal, our consideration of the first order may be at once eliminated from the appeal. Where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn. (*Wright* v. *Risser,* 290 Ill. App. 576; *Cantow* v. *Foute,* 335 Ill. App. 574; see also: *Wende* v. *Chicago City Railway Co.* 271 Ill. 437; *Precision Extrusions, Inc.* v. *Stewart,* 36 Ill. App. 2d 30.) Here, an examination of the two pleadings leaves no doubt that the original complaint was abandoned and withdrawn. Indeed, plaintiff completely changed his form of action in the amended complaint.

The first count of the amended complaint, which we find to be replete with conclusions, first alleged the election eliminating the office of township collector and the resolution of the board, then alleged that the board had, since the elimination of such office, accumulated the additional funds realized in a surplus account without designating the purpose thereof, and that in each year since 1957 the board had levied taxes which "failed to utilize" the accumulation in the surplus fund. Other allegations set forth the creation of the Lake County Public Building

Commission; that the board had transferred public funds and public land to the commission; and that there is at the present time the sum of $500,000 accumulated in the surplus account, which sum the 1962-1963 county budget has earmarked for transfer to the commission. Continuing, the count alleged in substance that the accumulation of surplus funds was unlawful, an abuse of discretion, fraudulent, *ultra vires,* and in contravention of the 1956 resolution of the board; that the accumulation resulted in "appropriations" in excess of corporate needs; and that the transfer of funds to the commission was beyond the scope of the corporate authority.

The concluding paragraph of count I, which we set forth in full for purposes of subsequent discussion, alleged the following:

"That under the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Sec. 3318), the Lake County Board of Supervisors is required to levy a direct annual tax on the full, fair cash value of all real and personal property within Lake County, which is not exempt from taxation, which will be sufficient to pay the annual rent on the lease which the Lake County Board of Supervisors is about to enter into for the rent of a building to be erected on property formerly owned by the County of Lake; that since the amount of the annual rental fee is to be determined by the Public Building Commission, which in turn is determinative of the tax to be levied and collected, that the subject Section of the Public Building Commission Act is unconstitutional in that it grants the power to determine the amount of tax to an executive branch of the government; that under the circumstances hereintofore referred to, i.e., the transfer of public funds and lands to the Lake County Building Commission, the action required to be taken by the Lake County Board

of Supervisors in levying the tax as aforesaid will result in two taxes for the same purpose in violation of the due process clause of the State and Federal Constitution; that the said tax will exceed the maximum fixed by statute without the required favorable vote at a referendum; that said tax is for a general corporate purpose and must be included in the corporate purpose rate statutory limitation; that said tax will result in a rate in excess of the maximum rate prescribed by statute and the Illinois Constitution; and that the statute authorizing the levy of said tax is evasive of and in contravention of the Federal and State Constitutions."

Count II of the amended complaint realleged certain parts of count I, then alleged that the county had transferred funds totalling $650,000 and public lands valued at $1,000,000 to the commission, and charged that such transfers were unauthorized, illegal and void. A concluding paragraph repeated verbatim the concluding paragraph of count I heretofore quoted. The remaining count, count III, likewise alleged the transfer of cash and land to the commission and alleged, in substance, that the acceptance of land and cash from the county was beyond the scope of the statutory powers of the commission, and that their acceptance by the commission "is sanctioning a statute impairing the obligation of contract as evidenced by * * *" the county board's resolution of October 10, 1956.

At its conclusion the amended complaint alleged that plaintiff had no remedy at law as to each of the counts and prayed for injunctive relief restraining the county from accumulating funds and transferring funds to the commission; restraining the commission from accepting funds from the county; and directing the commission to restore and return to the county the funds and land it had already received.

Defendants filed a motion to strike the amended complaint and to dismiss the action for want of equity, alleging in substance that conclusions were pleaded in certain respects, that certain of the allegations were false, frivolous and incorrect statements of law; that plaintiff was guilty of *laches;* and that the prior decree approving the transfer of land to the commission was *res judicata* to that issue. Following hearing and argument, the trial court, after taking judicial notice of the Public Building Commission Act and causing the prior decree, the October, 1956, resolution, and the pertinent appropriation ordinances to be made a part of the record, sustained the motion to strike and entered a final order dismissing the action. And while not stated in the formal order, the verbal ruling of the court which preceded the order admits of no doubt that the action was dismissed for want of equity.

Omitting for the moment any consideration of the allegations going to constitutional questions, and indulging in a most liberal construction of the amended complaint, it is one of plaintiff's theories under counts I and II that taxes levied by the county for the years 1957 to 1962 were illegal and void to the extent that they exceeded the county's appropriated needs. This theory, in turn, is founded upon the basic principle that taxes are levied to defray the necessary expenses of government rather than for a purpose of enriching the public treasury, and upon the repeated holdings of this court that taxing bodies may not levy taxes faster than they are needed and that an unnecessary accumulation of money in the public treasury is unjust, unpolitic and against the policy of the law. (*People ex rel. Kramer* v. *Chicago, Burlington and Quincy Railroad Co.* 8 Ill. 2d 382; *People ex rel. Bergan* v. *New York Central Railroad Co.* 390 Ill. 30.) Applied here, it is plaintiff's position that in determining the county's

needs and tax levies for each of the years in question the county authorities failed to take into consideration the extra fees realized by the county treasurer, and that the taxes for these years were excessive to the extent of such sums. In short, plaintiff does not attack the entire tax levied for county corporate purposes in those years, but only so much of the rates as permitted the accumulation subsequently granted to the commission, and we are told in his brief that the purpose of seeking equitable relief is to make the money granted to the commission available for "rebates to the taxpayer."

Even if it be assumed that the allegation of a surplus is true and that the plaintiff's theory is properly pleaded, it is clear that this phase of his suit is a belated attempt to convert a court of equity into a forum for the trial of tax objections contrary to section 18 of article VI of our constitution, which provides that county courts shall have original jurisdiction in proceedings concerning collection of taxes, and to the provisions of sections 194 and 235 of the Revenue Act, (Ill. Rev. Stat. 1961, chap. 120, pars. 675 and 716,) wherein the legislature has provided a remedy for the recovery of taxes paid on real estate. Except when a tax is laid upon exempt property, or is not authorized by law, or is levied on a fraudulently excessive valuation, it is settled that equity will not interfere to enjoin the collection of a tax, or to prevent the proper expenditure of taxes already collected, unless special grounds for equitable jurisdiction exist, such as "fraud," "irreparable injury" and cloud upon title, or unless the plaintiff does not have an adequate remedy at law. (*Lakefront Realty Corp.* v. *Lorenz,* 19 Ill. 2d 415; *Lackey* v. *Pulaski Drainage Dist.* 4 Ill. 2d 72; *Budberg* v. *County of Sangamon,* 4 Ill. 2d 518.) If, on the other hand, the taxing power is present, but has been exercised in an

erroneous or irregular manner, it gives rise merely to an erroneous or irregular tax, as distinguished from a tax wholly unauthorized by law, which will not be enjoined in equity. *Ames* v. *Schlaeger*, 386 Ill. 160.

No allegation is made in the amended complaint that the county lacked the authority to levy the taxes claimed to be excessive, or that the taxes were illegal *per se*, but the substance and effect of its many and arduous allegations is only that the tax officials improperly exercised their authority in such a manner as to cause an unnecessary accumulation of surplus funds. As we pointed out in *Lakefront Realty Corp.* v. *Lorenz*, 19 Ill. 2d 415, under persuasively similar facts, such an objection raises only the issue of an irregular or erroneous tax, for which the Revenue Act provides an adequate remedy, and affords no basis for equitable relief.

Nor were the constitutional issues sought to be pleaded in counts I and II sufficient to entitle plaintiff to relief. Indeed, we believe the motion to dismiss aptly describes them as frivolous. As may be seen in complete detail from our previous quotation from the amended complaint, plaintiff's constitutional attack was directed to section 18 of the Public Building Commission Act. (Ill. Rev. Stat. 1961, chap. 34, par. 3318.) which requires and authorizes municipal corporations entering into leases with the commission to levy an annual tax sufficient to pay the annual rental due under the lease. And, in substance, the grounds of attack are: (1) that the section is unconstitutional in that "it grants the power to tax to an executive branch of the government;" (2) that the levying of the tax "will result in two taxes for the same purpose in violation of the due process clause of the State and Federal Constitution;" (3) that the tax will result in a county rate which will exceed the maximum rate authorized by stat-

nte and constitution; and (4) that the statute authorizing the levy of the tax "is evasive in contravention of the State and Federal Constitutions."

The allegation that the power to tax is granted to an "executive branch" of the government cannot withstand the inspection of law or logic. Apart from the fact that the commission is not a part of the executive branch of the county government, but a separate municipal corporation, (see: *People ex rel. Adamowski* v. *Public Building Commission of Chicago*, 11 Ill. 2d 125), to say that the commission is given the power to tax because it may determine the amount of rental which will be paid from tax monies is absurd. Carried to its logical conclusions, we would have to hold that any merchant or contractor who furnishes goods or services to a county is in effect determining the rate of tax and exercising taxing power by fixing the price to be paid for such goods or services. Furthermore, the commission has little, if any, discretion in determining how much the rental will be. Under the provisions of section 15 of the act, (Ill. Rev. Stat. 1961, chap. 34, par. 3315.) the rentals and charges to be established by the commission are limited to the amounts sufficient to pay maintenance and costs of operation, and to pay accruing interest and bonds at maturity. We believe it clear from this language of the legislature that the commission does not, and will not, either directly or indirectly, possess indiscriminate control or influence over the taxes to be levied by the municipal corporations leasing from it. *Cf. Berger* v. *Howlett*, 25 Ill. 2d 128.

Equally without merit are the allegations that the levying of the tax will result in "two taxes for the same purposes," under the circumstance that the county has made cash grants to the commission. While plaintiff's brief gives us little assistance, and defendants' brief openly professes their lack of comprehension, it is apparently plaintiff's

theory that the cash grants and rentals will be used for duplicate purposes putting the taxpayer in the position of being taxed twice for a single purpose. Stated differently, plaintiff's theory seems to be that the county will make cash grants for the complete payment of the new structure, and in addition levy a tax to pay rental for its use. Such a theory is ludicrous on its face and totally ignores the workings and purposes of the Public Building Commission Act under which the new structure will become the property of the county after twenty years. Far from being for a duplicate purpose, the necessary and ultimate effect of the cash grants and the conveyance of land by the county will be to reduce the rental obligation of the county and the tax burden for such rental. Furthermore, it is noteworthy that no lease has as yet been entered into between the county and the commission, and that no tax has as yet been levied for rentals. Necessarily, therefore, two taxes have not been levied for the same purpose, and as to future taxes the allegation of the complaint is a mere conclusion of the pleader.

Reaching deep to find some validity for his allegation of "two taxes for the same purpose," plaintiff points to the fact that the county presently appropriates and levies for the maintenance and operation of the county building and argues that taxes levied to pay rental to the commission will be for the same purpose. Once again, however, this argument presumes that the county will continue to levy for maintenance and operation after those obligations pass to the commission. Should this occur, the taxpayer is not without a remedy under the Revenue Act. Finally, plaintiff points to the fact that the commission may lease space to State and Federal agencies and to other municipal corporations beside the county and rationalizes that because all of such prospective tenants are tax supported the result will be "double taxation." Not only does this argu-

ment misapprehend the recognized meaning of "double taxation," (see: *People ex rel. Toman* v. *Advance Heating Co.*, 376 Ill. 158, 163,) but it is premised on a false foundation. Being taxed for rental of the space utilized by the county and indirectly for space used by some other governmental unit is not being taxed twice for the same purpose. Moreover, the practical effect of leasing part of the space to other governmental units will be to reduce the rental obligation of the county and the burden placed upon the taxpayer for such item.

Considering next the allegations that the levying of tax for rentals will cause the county corporate rate to exceed the maximum authorized by statute and constitution, it is patently obvious that these are mere conclusions of the pleader and which, even if true, would in no manner warrant the equitable relief prayed. As previously noted, no tax has as yet been levied for the payment of rent, and should future levies for such purpose cause the county rate to exceed the limits fixed by law, a remedy is available to the taxpayer under the Revenue Act. It is to be presumed that the county authorities will act in a proper manner, (*Kankakee County Housing Authority* v. *Spurlock*, 3 Ill. 2d 277,) and, what is more, the vague possibility that the rate necessary to pay the rental authorized by the Public Building Commission Act might in the future cause the total county rate to be excessive is no measure of the constitutionality of the act.

The last of the constitutional allegations, *viz.*, that the statute authorizing the tax "is evasive in contravention of the Federal and State Constitutions," is insufficient to raise a constitutional question and, we would add, affords no basis for a wide ranging attack made in plaintiff's brief against the Public Building Commission Act in general, and the Lake County Public Building Commission in par-

ticular. Where the constitutional validity of a statute is assailed, the objection must be specific and complete. (*Lutkus* v. *Department of Finance,* 385 Ill. 221; *Pierce* v. *Carpentier,* 20 Ill. 2d 526.) At best this allegation of the complaint amounts to no more than a generalized charge of unconstitutionality. *Cf. Jewel Tea Co.* v. *Rowe,* 414 Ill. 495.

It may be conceded that equity will intervene on timely application, once a tax has been collected, to prevent a misappropriation of the fund, (*Gates* v. *Sweitzer,* 347 Ill. 353, 363; *People ex rel. Smith* v. *Hassler,* 262 Ill. 133, 137,) but it is likewise true that equity, in all cases where a mandatory injunction is sought, will strictly requre that the application for relief be promptly made and holds that a failure to assert such right without a sufficient excuse therefor, until after the expenditure of large sums of money, operates as a bar to relief. (*Carstens* v. *City of Wood River,* 344 Ill. 319, *Haas* v. *Commissioners of Lincoln Park,* 339 Ill. 491.) Measured by the latter rule, we think it clear that the effort of count II to recover the cash grants previously appropriated for and delivered to the commission comes too late. And, without going into considerations of *res judicata,* estoppel by verdict or collateral attack raised by the prior decree, we believe the same conclusion is to be reached insofar as the count attempts to compel a reconveyance of the land. All of these events were a matter of public record and known to plaintiff, and no sufficient excuse is shown for the delay which ranges one, two and three years respectively. In addition, there is yet another reason why relief is not forthcoming under this count. Its bare allegations that the county had no authority to transfer funds or land to the commission, and that such transfers were illegal, are met by the language of section 13 of the Public Building Commission Act, (Ill. Rev. Stats. 1959, 1961, chap. 34, par.

3313,) wherein the legislature expressly authorizes cash grants and the donation of real property to a commission. For the same reason, the allegations of count III that the commission had no authority to accept the grants and the land affords no basis for relief.

In count I of the amended complaint it is alleged that the accumulation of surplus funds was "contrary to" the board's resolution of October 10, 1956, while it is alleged in count III that the acceptance of public funds and land by the commission "is sanctioning a statute impairing the obligation of contract" as evidenced by the board's resolution. These theories, however, have not been pursued in this court by argument and citation of authority and we deem them to have been waived. *City of Lawrenceville* v. *Maxwell*, 6 Ill. 2d 42; *People ex rel. Carter* v. *Touchette*, 5 Ill. 2d 303.

Plaintiff's further contention that the trial court committed an abuse of discretion in denying his request to amend the amended complaint is not well taken. The test to be applied in determining whether discretion with respect to allowance of amendment to pleadings was properly exercised is whether it furthers the ends of justice and, in such regard, the court may properly consider the ultimate efficacy of a claim in passing on a motion for leave to amend. (*Deasey* v. *City of Chicago*, 412 Ill. 151.) Here, at the expense of delaying an urgent public project, plaintiff was afforded two opportunities to assert his claims, and we see no manifest abuse of discretion in denying him a third attempt, particularly since nothing was presented to show the materiality of the proposed amendment. (*Cf. Old Salem Chautauqua Assn.* v. *Illinois District Council of the Assembly of God*, 13 Ill. 2d 258.) As we stated in the *Deasey* case (p. 157): "Justice is not served by fruitless expenditure of time and effort by our courts, their officers and litigants."

The record shows that shortly after the original complaint was filed, Judge Moran, before whom the matter was first taken, disqualified himself and the other judges of the Nineteenth Judicial Circuit from hearing the case and assigned it to Judge Abrahamson of an adjoining circuit. No objection was made by plaintiff to such assignment. Defendants filed a motion to dismiss and, after a hearing, Judge Abrahamson dismissed the complaint and granted leave to file an amended complaint. After plaintiff had filed his amended complaint, and after defendants had filed a further motion to dismiss, plaintiff requested and was granted a change of venue from Judge Abrahamson, whose order assigned the cause to Judge O'Sullivan. Plaintiff now asserts that Judge Moran lacked authority to assign the matter to Judge Abrahamson, and that the latter was without authority to assign it to Judge O'Sullivan. While we think it is entirely questionable as to whether plaintiff has the standing to raise these claims, (see: 48 C.J.S., Judges, sec. 97; *Commissioners of Drainage Dist. No. 1* v. *Goembel,* 383 Ill. 323,) it is sufficient to say we find them moot in view of the showing of the record that the matter was ultimately heard by Judge O'Sullivan upon assignment by the administrator of this court.

Plaintiff next urges that he was denied the fair and impartial trial contemplated by the constitutional guarantee of due process of law because the trial judge made a private investigation by taking judicial notice of public documents not presented in open court, because the judge was biased and prejudiced against him, and because the assistant State's Attorney appearing for defendants was elected to and assumed the office of police magistrate on or about May 1, 1963, (three days before the hearing on the motion to dismiss the amended complaint,) but nonetheless continued to represent the defendants. The first of these contentions is not supported by the record which shows

that Judge O'Sullivan, without objection by plaintiff, caused the prior decree, the pertinent appropriation ordinances and the October, 1956, resolution to be incorporated into and made a part of the record. Nor de we find substance to the charge of bias and prejudice. While the record may show some understandable impatience with counsel's persistent efforts to continue arguments after rulings had been made by the court, it likewise shows that counsel was afforded a full hearing on all matters properly raised. Finally, and without reaching the collateral question of whether the assistant State's Attorney who was elected to the office of magistrate should have withdrawn in the middle of the case, plaintiff's claim of unfairness because one member of the judiciary might be expected to favor or be reluctant to rule against another member of the judiciary borders on the ridiculous under the circumstances of this case. Furthermore, as we have pointed out, the trial court was completely correct in his finding that the amended complaint was without equity.

The decree of the circuit court of Lake County is affirmed.

Decree affirmed.

IN THE SUPREME COURT OF ILLINOIS

Docket No. 38971—Agenda 30—November, 1964.

Robert Bowman *et al.*, Appellants, v. Lake County Public Building Commission *et al.*, Appellees.

Mr. JUSTICE HOUSE delivered the opinion of the court:

This is another chapter in the litigation which has thus far prevented the construction and financing of a courthouse complex for the use of Lake County.

Plaintiff Robert Bowman filed the current taxpayers' action against the Lake County Public Building Commis-

sion and the county of Lake and its board of supervisors on November 26, 1963, the date that rehearing was denied in a practically identical suit previously instituted by him wherein we affirmed the judgment of the circuit court of Lake County striking his amended complaint, dismissing his action and denying leave to further amend. *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

The defendants here, joined by the Lake County Bar Association and its president, then sought an original writ of prohibition to prevent the circuit court from exercising jurisdiction in the present action on the ground that it was identical in principle to the first case and sought to relitigate that case and thereby nullify our decision. We denied the writ since there was no indication that the trial court intended to take any action in disregard of the decision of this court, (*People ex rel. Lake County Bar Ass'n* v. *Circuit Court of Lake County,* 31 Ill. 2d 170 (No. 38331),) and pointed out that petitioner had more appropriate remedies.

Thereafter, the Lake County Bar Association and Frank M. Daley, an individual taxpayer, were permitted to intervene in this action. They joined the defendants in an answer and counterclaim alleging that this proceeding is designed to prevent the issuance and sale of proposed revenue bonds to finance construction of the improvement, that no issue is raised that had not been raised and decided in the first case and praying that plaintiff and all the other taxpayers of the county of Lake be permanently enjoined from further prosecution of this cause and from the institution of further litigation raising any issue adjudicated in the first *Bowman* case. (29 Ill. 2d 268.) The trial court entered a decree restraining the plaintiff and all other taxpayers of the county of Lake from further prosecution of this case "and from the institution of

vexatious or harassing litigation of any issue raised and decided, or governed in principle by the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268." This appeal followed.

Plaintiffs in their reply brief assert that the counterclaim is not at issue because the trial court did not permit them to file an answer thereto. The record shows that plaintiffs filed a reply to the answer but did not file an answer to the counterclaim. They did file a motion to strike the counterclaim which was denied by the court but the record is entirely silent as to their reason for having failed to file an answer to the counterclaim.

The essence of the relief sought in the complaint is restoration of public funds granted to the commission by the county, the recovery of title to public lands transferred by the board of supervisors to the commission, a finding of unconstitutionality of the Public Building Commission Act or in the alternative, a finding of noncompliance with the valid provisions of the act, a finding that taxes levied by the county for corporate purposes in each year since 1957 are illegal and unconstitutional and praying for an injunction enjoining the defendant county and its board from accumulating excess public funds and directing a referendum to determine the amount of debt to be incurred for the erection of a courthouse.

The constitutionality of the Public Building Commission Act was upheld in *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125, and need not be further considered. However, plaintiffs additionally contend that the permanent injunction has deprived them of a full hearing guaranteed by the due-process clause of the Federal and State constitutions and that it has deprived them of their "certain remedy" guaranteed by section 19 of article II of the State constitution.

These additional charges of unconstitutionality require a comparison of the scope of the holdings in the first case with the issues which plaintiffs now seek to have decided. The plaintiffs are seeking the same relief here that they sought in the first *Bowman* case. We there fully explained that substantively and procedurally their complaint, if proved, would not warrant the relief sought. In this case they have made some adjustments in their pleadings and engaged in procedural maneuvering which they contend take this case outside the holding of the first case. We have carefully examined the record and briefs and find that the many distinctions drawn by plaintiffs between this case and the first are without a difference. To fully discuss each of the distinctions would render this opinion an argumentative repetition of the opinion in the first *Bowman* case. It is sufficient to note that the only new matters are the allegations relating to subsequent transfer of funds and the execution of a lease. As noted in the prohibition case (No. 38331) with reference to the transfer "* * * these are no different in principle from the earliest transfers and are governed by our early opinion", and with respect to the lease, "* * * it [the complaint] fails to point out in what respects the lease or the levy of the annual tax to pay the rent fails to conform to the provisions of section 14(h), (i) and (j) of the Public Building Commission Act relating to leases or section 18 providing for the levy of a tax for the payment of rental."

After the entry of the decree appealed from, Matthew Hoffman, and counsel for plaintiffs, as taxpayers, sought to file a supplemental complaint in this cause also attempting to raise the same issues, and the trial court denied leave. Upon oral motion we permitted it to be submitted as a part of the record. Ample opportunity has been afforded the plaintiffs and any other taxpayer to assert their claims and it was well within the discretion of the trial judge to deny the motion to file such supplemental complaint.

We are of the opinion that the issues in this case were disposed of in the first *Bowman* case and that plaintiffs have not been denied due process of law or their "certain remedy".

Defendants assert that the continued efforts of plaintiffs are for the purpose of harassment, which plaintiffs deny. Whether intended or not, this litigation has, in fact, been harassing and vexatious. The litigation has thus far retarded the construction of this improvement and the sale of the revenue bonds to finance it. Under these circumstances the court was amply justified in ordering the writ to issue. See 28 Am. Jur., Injunctions, sec. 210; C.J.S., Injunctions, sec. 40 h.

The decree sustaining defendants' counterclaim is affirmed. Mandate is to issue immediately.

Decree affirmed.

APPENDIX C.

COMPLAINT

Now comes the plaintiff, Robert Bowman, by his attorney, Paul E. Hamer, on behalf of himself and all other taxpayers of the County of Lake, complains of the defendants and for cause of action alleges:

COUNT I

1. That the Plaintiffs are citizens of the State of Illinois and residents of the County of Lake and subject to taxation by said County of Lake for County purposes; that at all times herein mentioned they have been and now are taxpayers of said County.

2. That at all of the times herein mentioned the Defendants were the duly qualified and acting members of

the Board of Supervisors of the County of Lake, State of Illinois and together constituted said Board; the County of Lake is a body politic of the State of Illinois; and that the members of the Lake County Building Commission were appointed and acting as the Lake County Building Commission since their appointment on or about the third day of May, 1960.

3. That on or about the 10th day of October, 1956, prior to the elimination of the office of Township Collector, the County Board of Supervisors, at a duly constituted meeting, passed the following Resolution to-wit:

> "Be It Resolved, that if and when these additional funds are available (from the elimination of the office of Township Collector), no levy shall be approved by the Board, which, when added to the balance on hand at the end of any fiscal year, plus anticipated earnings from all other sources during that year, shall produce in excess of the annual budgeted needs of Lake County."

4. That subsequent thereto, by an election held on the sixth day of November, 1956, by the vote of the majority of the electors voting at said election, the office of Township Collector was eliminated.

5. That a proposal to authorize the issuance of bonds for the purpose of erecting a new County Court House was submitted to a referendum before the electorate of said County on or about the fourth day of November, 1958, and said referendum was defeated by the majority of the electors voting at the election as aforesaid.

6. That the Lake County Board of Supervisors did on the tenth day of June, 1963, authorize or transfer the sum of $250,000 to the Lake County Public Building Com-

mission herein and that on the tenth day of September, 1963, the Lake County Board of Supervisors did authorize or transfer the sum of $250,000 to the said Commission, all pursuant to the Annual Appropriation submitted to the Lake County Board of Supervisors on the ninth day of November, 1962 and pursuant to the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3313).

7. That thereafter on the fourth day of October, 1963, the Lake County Board of Supervisors did enter a lease with the defendant herein under which the said County of Lake is to rent all but 499 square feet of a proposed building to be erected by the defendant herein at an annual rental fee and that pursuant to the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, para. 3318), the County Clerk of Lake County has or will extend taxes against all of the taxable property in said County which will be sufficient to pay the annual rental received in the aforementioned lease.

8. That the accumulation and transfer of the sum of $500,000 to the defendant herein is a misappropriation of public funds resulting from an unnecessary accumulation of money in the public treasury which is unjust, unpolitic and against the policy of the law.

9. That the accumulation and transfer of the sum of $500,000 to the defendant herein was in contravention of the Resolution of the County Board on October 10, 1956 ordering the disbursement of public funds.

10. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which authorizes such cash grants is said, illegal and in contravention of the Illinois Constitution (Article Two, Section Fourteen) in that said statute impairs the obligation set forth in the Resolution of the County Board passed on October 10, 1956.

11. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which authorizes such cash grants is void, illegal and is in contravention of the due process of law provisions of both the State and Federal Constitutions in that the terms are indefinite and uncertain since there are no limitations placed on such grants.

12. That the transfer of said sum was a squandering of the public resources of the County of Lake, to replace which additional taxes will be required to be levied.

13. That the section of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which expressly authorizes cash grants to a commission is illegal, void and unconstitutional in that it permits taxing authorities to levy taxes designed to produce enough revenue to cover proposed grants circumventing completely all restrictions imposed by the Illinois Constitution (Article Nine, Sections 8, 9 and 12) and other applicable statutes pertaining to the levying of taxes the expenditure of public funds.

14. That on or about the seventh day of January, 1963, the plaintiffs herein filed a suit in the Circuit Court of Lake County seeking to prevent the transfer of said funds, being case number 63-27, but thereafter the Supreme Court of Illinois, in case number 38073, on or about the twenty-fifth day of October, 1963, upheld a motion to dismiss the amended complaint filed in said suit and further, that on or about the seventh day of November, 1963, the plaintiffs in said suit filed a Petition requesting a rehearing on said case.

COUNT II

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above, and further allege:

2. That on each of the following dates: December 11, 1961, May 8, 1962 and August 9, 1962, the Lake County Board of Supervisors did authorize or transfer the sum of $100,000 on each of the dates as aforesaid to the said Commission; that on the eleventh day of September, 1962, the same Lake County Board of Supervisors did authorize or transfer the sum of $150,000 to the defendant herein pursuant to the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3313); that on March 21, 1961 and on November 17, 1961, the Lake County Board of Supervisors did authorize or transfer the sums of $150,000 and $50,000 respectfully to the said Commission.

3. That thereafter, on the fourth day of October, 1963, the Lake County Board of Supervisors did enter a lease with the defendant herein under which the said County of Lake is to rent all but 499 square feet of a proposed building to be erected by the defendant herein at an annual rental fee and that pursuant to the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318), the County Clerk of Lake County has or will extend taxes against all of the taxable property in said County which will be sufficient to pay the annual rental received in the aforementioned lease.

4. That the accumulation and transfer of the sum of $650,000 to the defendant herein is a misappropriation of public funds resulting from an unnecessary accumulation of money in the public treasury which is unjust, unpolitic and against the policy of the law.

5. That the accumulation and transfer of the sum of $650,000 to the defendant herein was in contravention of the Resolution of the County Board on October 10, 1965 ordering the disbursement of public funds.

6. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which author-

izes such cash grants is void, illegal and in contravention of the Illinois Constitution (Article Two, Section Fourteen) in that said statute impairs the obligation set forth in the Resolution of the County Board passed on October 10, 1956.

7. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which authorizes such cash grants is void, illegal and is in contravention of the due process of law provisions of both the State and Federal Constitutions in that the terms are indefinite and uncertain since there are no limitations placed on such grants.

8. That the transfer of said sum was a squandering of the public resources of the County of Lake, to replace which additional taxes will be required to be levied.

9. That the section of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which expressly authorizes cash grants to a commission is illegal, void and unconstitutional in that it permits taxing authorities to levy taxes designed to produce enough revenue to cover proposed grants circumventing completely all restrictions imposed by the Illinois Constitution (Article Nine, Sections 8, 9, and 12) and other applicable statutes pertaining to the levying of taxes or the expenditure of public funds.

10. That on or about the ninth day of November, 1962, one of the plaintiffs herein, while attending a public meeting of the Lake County Board of Supervisors wherein the said Board was to consider the said Annual Appropriation and Levy Ordinance for the period from December 3, 1962 to December 1, 1963 did become aware of, for the first time, the prior cash grants by said Board to the defendants herein.

11. That prior to the ninth day of November, 1962, various Commissioners of the Commission herein, as well as members of the Lake County Board of Supervisors had stated that the proposed "7½ million dollar court house complex would cost the taxpayers nothing" and further, that the Lake County Board of Supervisors would abate the tax required to be levied under the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318).

12. That relying on these aforementioned statements plaintiffs were lulled into inaction until on or about the ninth day of November, 1962 and that thereafter plaintiffs sought legal counsel, but was unable to obtain counsel because of the refusal of local counsel to become involved in such an issue, until on or about the twenty-first day of December, 1962 when they were able to obtain the services of the counsel herein.

13. That on or about the seventh day of January, 1963 the plaintiffs herein filed a suit in the Circuit Court of Lake County, being case number 63-27 seeking the restoration of such funds.

14. That the members of the Lake County Public Building Commission knew or should have known that the statements alluded to in paragraph eleven (11) of this Count were fraudulent and made with an intent to deceive the plaintiffs since the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) requires that a tax be levied sufficient to meet the annual rental payments and that the Illinois Constitution (Article Nine, Sections 6, 9 and 10) prohibit the commutation or abatement of taxes required by law to be levied.

COUNT III

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above, and further allege:

2. That on or about the sixth day of February, 1961, the Lake County Board of Supervisors did convey by a simple quitclaim deed all interest to that parcel of land upon which the present county building is situated, as more particularly described in said deed a certified copy of which is hereby attached hereto and made a part thereof as "Exhibit A", to the said Commission herein.

3. That at the time of the conveyance as aforesaid the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3313 and Para. 3314(b)) provided for said conveyance, but that the subject paragraphs of said Act were illegal, void and in contravention of the then existing statutes in that the Act permits the gift of public lands which terminates the rights of the public in and to the said public lands contrary to the public policy of this State and further, said conveyance was in contravention of the conveyancing Act (Ill. Rev. Stat., Chap. 30, Para. 157).

4. That on or about the fourth day of August, 1961, the Illinois Legislature amended both the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3314(b) but not Para. 3313) and the Conveyancing Act (Ill. Rev. Stat., Chap. 30, Para. 157) to permit a conveyance between a municipal corporation and a Building Commission provided the instrument of conveyance contains a reverter clause.

5. That the instrument of conveyance alluded to in paragraph two (2) of this Count does not contain such a reverter clause in contravention of the public policy

of this State and the Conveyancing Act prior to the amendment as aforesaid and further, that said instrument of conveyance does not contain a reverter clause now required under both the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3314(b), but not Para. 3313) and the Conveyancing Act (Ill. Rev. Stat., Chap. 30, Para. 157).

6. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3313) which permits the grants of land to the Commission is in contravention of the public policy of this State.

7. That the knowledge of facts herein alleged in this Count was not acquired by the plaintiffs herein until on or about the sixth day of February, 1963 when Counsel for the plaintiffs advised the plaintiffs of the facts as alleged herein.

8. That on or about the eleventh day of February, 1963 did file an amended Complaint in the Circuit Court of Lake County being case number 63-27, seeking a reconveyance of the property in question.

COUNT IV

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above and further allege:

2. That the plaintiffs and each of them as taxpayers have been adversely affected by the utilization of the Public Building Commission Act by the Lake County authorities and that they are seeking to compel the restoration of public monies heretofore illegally disbursed from the Lake County treasury pursuant to the Public Building Commission Act.

3. That the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3301, et seq.) is invalid, illegal, void and unconstitutional when applied to the factual situation existing in the County of Lake as more particularly hereinafter set forth.

4. That the Sheriff of Lake County is a constitutional officer charged with the operation and maintenence of the County Building under the statute relating to Sheriffs (Ill. Rev. Stat., Chap. 125, Sec. 14) and under Section 3314, Sub-paragraph (c), (f) and (m) of said Act the Public Building Commission may and the lease between the County and the Lake County Public Building Commission provides for the operation and maintenance in contravention of the Illinois Constitution and applicable case law.

5. That the Public Building Commission is illegal, void and unconstitutional in that it permits the creation of a municipal corporation in contravention of Article Eleven, Section 1 of the Illinois Constitution.

6. That the Public Building Commission is illegal, void, unconstitutional and contrary to the public policy of this State as set forth under Article Four, Sections 18 and 33 and Article Nine, Section 8 of the Illinois Constitution and the Counties Act (Ill. Rev. Stat., Chap. 34, Section 406) which establish a public policy of this State with regard to debts in excess of certain limitations and with regard to limitations on expenditures for public buildings which require a referendum and further that the Public Building Commission Act contravenes this public policy in that it permits a building and also permits the levy of a tax interest on a debt without the necessary referendum. Further, that the electorate of Lake County, in 1958, defeated a referendum calling for a bond issue of general obligation bonds in the amount of 2½ million

dollars for the purpose of erecting a court house and that thereafter the Lake County authorities created the Lake County Public Building Commission for the sole purpose of circumventing a referendum as there had been in existence since 1955 a Public Building Commission which could have been utilized by the Lake County authorities prior to said referendum.

7. That the said Act is illegal, void, invalid and unconstitutional when applied to the factual situation existing in Lake County in that it permits the accumulation and transfer of public monies in contravention of the resolution of October 10, 1958 and further, that the acceptance of public funds and lands by the defendant Commission herein sanctions a statute which impairs the obligation set forth in the resolution as aforesaid in contravention of the Illinois Constitution prohibition against impairment of contracts. And further, that the citizens of the County of Lake, relying on said Resolution, thereafter did eliminate the office of Township Collector at an election held in November, 1956.

8. That the said Act is illegal, void, invalid and unconstitutional in that it permits the grants of public land and monies (Section 3314 (b) and (1) and Section 3313 of said Act) which subjects the rights of the plaintiffs herein to the discretion of said authority without any limitations on the amount of such grants all in denial of the due process clause of the Federal and State Constitutions.

9. That the said Act is illegal, void, invalid and unconstitutional in that the General Assembly has granted powers to a municipal corporation, broader than itself possesses.

10. That the subject Act is illegal, void, invalid and unconstitutional when applied to the factual situation

existing in Lake County in that the Act is an obvious scheme or devise created by the legislature which would permit a municipal corporation to create an indebtedness in excess of the statutory or constitutional limitations without the consent of the people and further, that the Lake County authorities in an attempt to circumvent the debt limitations of Section 12 of Article Nine of the State Constitution, have declared that they intend to abate the tax required to be levied. That the declaration of abatement or commutation is for the purpose of evading the constitutional limitations set forth under Article Nine of the State Constitution or in the alternative to circumvent a referendum required by the public policy of this state and nation. And further, that the abatement of the tax, if permitted, is in contravention of Article Four, Section 23 of the Illinois Constitution. That if the underlying purpose of the Act or if the use of said Act by the Lake County Authorities is to circumvent a referendum, then the Act violates the fundamental principles of civil government to which Article Two, Section 1 and 20 of the Illinois Constitution refer.

11. That Section 3314, sub-paragraph (b) of said Act is invalid, illegal, void and unconstitutional in that it permits the Commission to acquire fee simple title to property in contravention of the public policy of this state which has declared that public property is held in trust for the benefit of the public as third-party beneficiaries.

12. That Section 3314.1 of said Act is invalid, illegal, void and unconstitutional in that it permits the Commission to pledge or mortgage public property contrary to the public policy of this State and in contravention of Section 3315 of said Act which provides that the property acquired shall be free from all liens.

13. That Section 3306 of said Act is invalid, illegal, void and unconstitutional in that it permits multiple office holding contrary to the separation of powers precept established by Article Three of the Illinois Constitution; that said section permits membership on the County Board and the Commission, positions which have been held to be incompatible and in contravention of Section Three of Article Four of the State Constitution and that the Lake County authorities have created a corporate body which is but a mere shadow of another corporate body in contravention of the constitutional precepts set forth in this paragraph.

14. That Section 3307 of said Act is illegal, void, invalid and unconstitutional in that it permits additional compensation to county officials in contravention of Article Ten, Section 10 of the Illinois Constitution and in violation of the Fees and Salaries Act (Ill. Rev. Stat., Chap. 53, Sec. 58) which provides that no county supervisors shall receive, directly or indirectly no other allowance or emolument. And further, that county supervisors while acting as members of the Commission have received such an allowance or emolument.

15. That Section 3318 of said Act is illegal, invalid, void and unconstitutional in that it permits a tax imposed for the payment of a debt not incurred by the authority imposing the tax and for the payment of which it is in nowise responsible; that since the Act in question has been construed to be in the promotion of the general welfare and safety of the State, the Act permits the imposition of a tax for the corporate purpose of the State in contravention of Article Nine, Section 10 of the State Constitution.

16. That the purpose of said Act is to circumvent the Constitutional limitations set forth in Sections Nine and Twelve of Article Nine of the Illinois Constitution.

17. That Sections 3314 and 3316 of said Act are invalid, void, illegal and unconstitutional in that they permit the Commission, acting as an arm of the State to be sued, contrary to the public policy and Article Four, Section 26 of the State Constitution.

18. That Sections 3314 (1) and 3313 of said Act are illegal, void, invalid and unconstitutional in that they permit a municipal corporation to accumulate, divert and disburse public monies from the treasury of such a municipal corporation; that said Sections permit the squandering of the resources of a municipality, to replace which taxes have been and will be required to be levied; and further, that said Sections permit the appropriation of public funds derived from taxation, all in contravention of the State Constitution and the public policy of this State and that the Lake County Board of Supervisors, while acting under the guise of the authority of these Sections have authorized the illegal disbursement or diversion of funds properly belonging to the county treasury to replace which taxes have been and will be required to be levied.

19. That Section 3314.2 of said Act is void, illegal, invalid, and unconstitutional in that it grants to said Commission the authority to grant special privileges and immunities to municipalities other than those located within the county seat, all in violation of Section 22 of Article Four of the State Constitution and is in violation of the avowed purpose of said Act as set forth in Section 3302 of said Act.

20. That Section 3318 of said Act is void, illegal, invalid and unconstitutional in that it permits the imposition of a tax upon a municipal corporation, or the inhabitants or property thereof for corporate purposes and permits the taking and selling of private property for the

payment of the corporate debts of a municipal corporation, all in contravention of Section 10 of Article Nine of the State Constitution.

21. That the Lake County authorities and the Lake County Public Building Commission, purporting to act under the said Public Building Commission Act have incurred indebtedness for which they have not provided a direct annual tax all in contravention of Section 12, Article Nine of the State Constitution.

22. That the acts of the Lake County Public Building Commission are not in accord with the purposes of the Act as set forth in Section 3302 of said Act and further, that said Commission has not acted in accordance with Section 3318 of said Act.

23. That Section 3325 of said Act is violative of Section 21 of Article Three of our constitution in that it is an attempt by the General Assembly to tell the courts how to construe a statute.

24. That said Act is illegal, void, invalid and unconstitutional in that it purports to create a municipal corporation without the constitutional separation of powers; without taking authority; and without officers who are directly elected by the people or appointed in some mode to which they have given their assent.

COUNT V

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above and further allege:

2. That since 1957 and each and every year thereafter the Lake County Board of Supervisors have appropriated and caused to be levied a tax for corporate purposes which is illegal per se and in contravention of a Resolution of

the said Board of Supervisors adopted on October 10, 1956. That said taxes for corporate purposes are illegal per se in that they were in excess of the necessary expenses of the County government; that said corporate taxes were levied in excess of the actual financial needs of said County; that said taxes for corporate purposes resulted in a wrongful accumulation of public monies, which enriched the County Treasury; that such an unnecessary accumulation in the public treasury is unjust, unpolitic and against the policy of the law of this State; that said tax levies for corporate purpose were in derogation of the Resolution passed by the Lake County Board of Supervisors on October 10, 1956; that said corporate taxes resulted in an unnecessary accumulation which is illegal; that such a corporate tax was made where there was more money on hand in the appropriate funds than was needed for the purpose during the ensuing fiscal years; that the said County Board did not consider the amount of money on hand in the treasury and in the process of collection, resulting in the levies of taxes for corporate purpose greater than the actual needs of the County; that the amount of said tax levies for corporate purposes were so excessive as to clearly indicate a fraudulent purpose; that public monies during this period have been illegally disbursed, withdrawn and withheld from the County treasury; that to replace said monies which have been disbursed, withdrawn or withheld from said County treasury, additional taxes for the same purpose, will be and have been levied; that all or part of said taxes levied for corporate purpose during the periods in question were not authorized by a valid law; and that the tax levied as a result of a lease entered into on or about the fourth day of October, 1963 between the defendants herein is for a corporate purpose and if included the tax for corporate purposes is in excess of the statute and constitu-

tional limitations without the required favorable vote at a referendum.

3. That the plaintiffs will suffer irreparable injury unless the funds heretofore transferred to the Lake County Public Building Commission are returned in that if the plaintiffs seek relief under the applicable provisions of the Revenue Act (Ill. Rev. Stat., Chap. 120, Para. 675 and 716) that additional taxes will be required to be levied to pay rebates to the taxpayers; and that the funds heretofore transferred could also be used, if returned to the County Treasury where they properly belong, to reduce tax levies for corporate purposes during the ensuing years.

4. That the plaintiffs have no adequate remedy at law in that the provisions of the Revenue Act (Ill. Rev. Stat., Chap. 120, Paras. 675 and 716) provide a means for the recovery of taxes paid on real estate only and that recovery under these sections and other applicable sections can only be had where taxes are paid in full under protest and filed with written objections and that section 716 does not provide for the recovery of illegal taxes paid on personal property; that this suit is not concerned with the assessment or collection of taxes to which section 18 of Article VI of our constitution refers; that the County Court, as of the date of this suit, is without equitable jurisdiction to compel the return of the public funds heretofore transferred to the Building Commission; that the purpose of this suit is to prevent the improper expenditure of public funds already collected; that some of the plaintiffs herein have appeared before the Lake County Board of Review in November, 1961, paid their 1961 taxes under protest in June of 1962, filed written objections in September, 1962 and as yet have to be heard on this matter, that the County Court of Lake County has

held that no tax objection matters will be heard unless an appearance is made before the Lake County Board of Review, even though the objection does not pertain to the assessed evaluation or exemption; that in the event the plaintiffs or any of them should elect to refuse to pay their real property taxes pursuant to paragraph 716 of the Revenue Act, that the mortgagees of said real property pursuant to the terms of the mortgages are empowered and would pay said delinquent tax prior to any litigation which would enable the plaintiffs to assert a valid defense against said illegal taxes; that if the plaintiffs elected to refuse to pay their real or personal property taxes, that the county authorities would force a sale of said property or obtain a court order which would serve as a cloud on said property; that certain of the plaintiffs herein have refused to pay their personal property taxes which are alleged to be illegal and that the said judgments are serving as a cloud on the title of both their real and personal property; that the remedies afforded by the Revenue Act do not apply to a taxpayer's class suit of this nature, since the individual property owners are required to file written objections; that the remedy provided for under the Revenue Act (Para. 675) if utilized by each individual taxpayer would result in a multiplicity of suits which would needlessly hamper the function of the county court; that the remedies provided for under the Revenue Act would be costly and time-consuming to all litigants and would subject the plaintiffs to a pecuniary loss thereby; that the plaintiffs have a property right in the county treasury by virtue of their past and future tax payments which is not recognized by the applicable provisions of the Revenue Act; that if the plaintiffs were to refuse to pay their real estate taxes and assert the illegality of the corporate tax as a meritorious defense to any sale of their property or in any subsequent litigation, the re-

sult would hopelessly and needlessly restrict the function of not only the county government, but all other municipalities and other taxing bodies within said county; and finally, that all distinction between the jurisdiction of the County Court and the Circuit Court has been eliminated by the combination of the lower courts into an integral court system.

COUNT VI

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above and further allege;

2. That the plaintiffs and each of them have a property right in the county treasury by virtue of their past and future tax payments, which property right will be damaged if the public funds hereinafter alluded to are expended by the said Commission.

3. That based upon information and belief, that on the following dates, the County of Lake granted or authorized to be granted the sums indicated to the Lake County Public Building Commission; March 21, 1961 ($150,000), November 17, 1961 ($50,000), December 11, 1961 ($100,000), May 8, 1962 ($100,000), August 9, 1962 ($100,000) and September 11, 1962 ($150,000), or a total of $650,000.

4. That on or about the 7th day of January, 1963, the plaintiffs herein filed a suit in the Circuit Court of Lake County, being case number 63-27, to recover the sums alluded to in paragraph three (3) of this Count.

5. That upon an accounting by the said Commission, upon information and belief, that as of the 7th day of January, 1963, the said Commission had received the sum of approximately $650,000 and that said Commission had expended the sum of approximately $130,000 on various and diverse items.